S. Kanara 4/55

1955

File No.

K

Legal DEPARTMENT

E BRANCH

Subject:— Suits -- Kanara

Institution of a suit against Shri Dattatraya N. Gopi for sale of mortgaged property

Q-81

Institution of a suit against Shri D.N. Gopi of Gokarna for sale of the mortgaged property.

It is proposed to institute a suit against Shri Dattatraya Narayanappayya Gopi of Gokarna for sale of mortgaged property, for recovering an amount of Rs.20000/ and interest thereon, secured by the mortgage deed executed by Shri D.N. Gopi on 14/8/48 as rectified by a deed of rectification executed on 24/3/49.

2. The District Government Pleader may be asked to institute a suit on the lines of instructions in the accompanying Memorandum of Instructions,

MMC
10/12/52

Sobr (mfl.) Re
10/12

Received in C. S. D. Br. 3123
~~10-12-52~~ at 4.30 pm
min file 4pp

For elecy C.S.D. 10/12

2074 9/E
11/XII/52

-3-

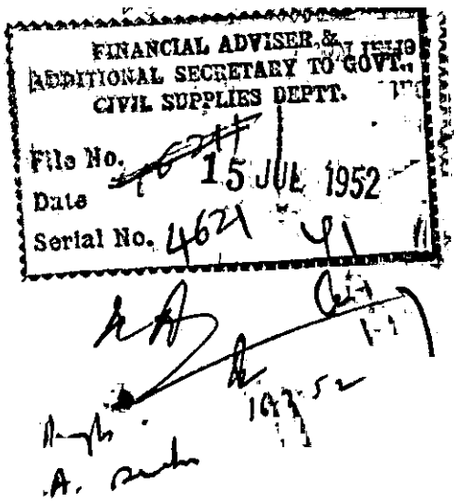
Subject :- Civil Suit against Shri D.N. Phat Gopi.

No. 75
Office of the Collector of Kanara
Karwar, 8th July, 1952.

To

The Assistant Director of Civil Supplies (Accounts), BOMBAY.

Reference :- Civil Supplies Department No. CA II/483 A/2496 dated 17th June, 1952.



As directed by you I am submitting herewith my report under rule 108 of the Rules for the conduct of Legal Affairs of Government :

(a) Shri D.N. Phat Gopi of Madangeri owns a mill situated at Madangeri known as Amba Rice Mill. He was given contract to mill Govt. paddy both from Ankola and Kumta Talukas. Paddy was being issued to this miller continuously - from December, 1945 to November, 1947 although regular delivery of outturn was not taken and accounts not cleared at the end of each month. Besides the outturn was not taken as fixed by the Collector. Thus the outturn due from the miller went on accumulating. The amount now due from him is the value of the rice etc. which was due from him less the milling charges that were to be paid to him and the amount of deposit he paid on 8th June, 1948. The amount due from him -- stands at Rs 48,7888-3-0 including interest upto 31st December, 1951 (Vide statement marked A).

When legal steps were being taken against this miller for the large amount due from him a mortgage deed was obtained from him for -- Rs 30,000/- on 14th August, 1948 under which the miller agreed to pay the sum of Rs 30,000/- within 18 months with interest thereon at 6%. Under this mortgage deed he mortgaged the property

CA II 952
19/7

5 5 32

mentioned in the Deed. In addition to this mortgage deed, a security bond for Rs 30,000/- had been obtained on the same date under which the Miller Shri Dattatraya Nagappayya Gopi of Gokarn and his surety Shri Damodhar Narasinha Hebbar of Achve in Ankola Taluka agreed to pay to the Government the amount due from the -- Miller after deducting the dues of the miller. This security bond was taken in addition to the sum of Rs 20,000/- covered by the mortgage -- deed as the total amount then due to Government appeared to be round about Rs 50,000/-. These Deeds have been obtained under the order of Government (vide letter No. L.42/1343 dated 16th July, 1948 - Marked R). These documents were got rectified to cover a technical defect therein. Copies of the original mortgage Deed and that of the rectified Deed as also the -- copy of the original security bond and ~~xxx~~ of the deed of rectification accompany. The -- Miller was allowed the advantage of continuing the work so as to enable him to pay off the Government dues partially out of the wages due to him. But it was found that the Miller was not willing to carry on the work smoothly and or to agree to the milling rate agreed to by the neighbouring Millers. The Miller did not -- deliver the outturn at the percentage fixed by the Collector and as agreed to by him in the milling agreement. Since he did not give the agreed outturn he was not issued Government paddy. It was virtual termination of his -- contract. It was therefore found inadvisable and uneconomical to transport paddy to -- Madangeri mill from other places (vide copy my report dated 5th September 1949 - Marked

Paddy

Paddy was issued to the other mill Madangeri owned by Shri M.S. Shanbhag since March, 1949 and he delivered the outturn as per the percentage fixed by the Collector and as agreed to by him. He is milling the Government paddy every year (since 1949) at the sanctioned rate by the Collector and delivering the percentage as fixed by the Collector.

It was therefore found expedient to enforce the mortgage deed. Out of the mortgage property truck, which is item No. I in the Schedule was found subsequently to be of the ownership of a stranger and that the mortgagor was not its owner. Hence the attempt to seize it had to be given up. Then an attempt was made to take possession of the mortgaged property including the Mill. But it was found that this remedy was not open to the Government without filing a Suit. It has therefore been decided to enforce the mortgage deed by filing a Suit thereon. Hence this report.

(b) Mortgage Suit for Rs 20,000/- and interest thereon from the date of mortgage till today at 5% under the terms of the mortgage. The total sum due comes to :-

(i)	Principal amount	Rs 20,000-0-0
(ii)	Interest from 14.8.48 at 5% on Rs 20,000/- upto 30-6-52	Rs 3,882-2-1

(c) The Miller has failed to pay the amount as agreed. Possession of the mortgaged property cannot be obtained without filing a Suit. The only remedy is to file a Suit on the mortgaged Deed and apply for interim order to --

to appoint a receiver to take possession of the ~~mill~~ mortgaged property including the mill. This will enable the receiver to run the Mill instead of keeping it idle as the machinery is likely to be damaged by rust.

(d) The mortgagor Shri D.N. Bhat Gopi has protested to the Collector for nonsupply of paddy to enable him to pay Government dues. The Mill has been locked with - both by Govt. and the Miller's locks. He has not objected to this procedure. He has accepted his liability in the Mortgage Bond.

(e) & (f) - The documentary evidence consists of documents already referred to in Clause (a). If the defendant challenges that the Government dues were below ₹ 20,000/- it will be for him to prove it. To rebut such a contention, the Government may then have to rely on milling account etc. There is no question of oral evidence. So far as is known the defendant will not be able to adduce any evidence on this behalf.

(g) There was a ~~seem~~ proclamation issued on 12-8-1950 for putting this mortgaged property to auction. But this had to be ~~stee-~~ ~~ped~~ dropped as it was found that the Government was not authorised to effect a sale otherwise than through Court by filing a Suit. Hence the sale was dropped. But at that time the -- mortgaged property excluding the truck was valued at ₹ 23,460/-. ~~Thereafter~~ Therefore the chances of recovery were near about -- ₹ 23,000/- or 24,000/-. In addition to this the personal liability of the mortgagor is in time. He is a member of a big joint family

of ---

of which Shri M.G. Gopi is the manager. However as the family is too big it may be difficult for the Government to determine the interest of Shri D.F. Gopi in the joint family property which pays as assessment about Rs 4 to 5 thousand. But when such interest is substantial the Govt may be able to get the balance due, as the Miller is not likely to allow his interest to be sold in Court auction. However it will not be safe for Government to purchase such interest of the mortgagor in his joint family property which will have to be sold through Court only in case the mortgaged property is found insufficient to cover the total decretal amount, decreed in the Suit now proposed to be filed. However there is likelihood of the neighbouring owners of such properties coming up to offer bids. The major portion of the claim is thus sure to be realised. This suit is therefore proposed to be filed.

2. As required by Clause (ii) of Rule 108 I have enclosed herewith copies of all documents and of all correspondences relevant to this case.

3. In Clause (g) above I have already pointed out that major portion of the Claim can be realised.

Hence the Remembrancer of Legal Affairs may be moved to accord sanction for the filing of the suit and for meeting the expenses for filing the Suit.

Dictated signed by the Collr, for Collector of Kanara.

LR.

No 20889/E 13

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 12th December 1952.

Subject:- Institution of a suit against Shri D.N.Gopi of Gokarna for sale of the mortgaged property.

MEMORANDUM.

With reference to the subject noted above, the District Government Pleader, Karwar is informed that sanction is accorded for the institution of Civil Suit on the lines of the accompanying Memorandum of Instructions.

The papers of the case received from the Collector are enclosed with this. He is requested to obtain the original mortgage bond from the Collector.

for Remembrancer of Legal Affairs.

To
The District Government Pleader
Karwar

Copy to
The Civil Supplies Department with its file DA483A.

GR Sent to Press

under no. 19332/E dtd- 31-8-53

From:

The District Government Pleader, Kanara, Karwar

To

The Remembrancer of Legal Affairs, Bombay.

No. 585 of 1962. Karwar, dated 19th December 1952.

Sir,

I am in receipt of your letter No.20889/E dated 12th instant forwarded to me by the D.G.P. of Dharwar to whom the papers appeared to have been sent wrongly. In your above quoted letter you have informed me that sanction has been accorded for the institution of the suit on the mortgage bond passed by Shri D.N.Gopi. The suit amount comes to about Rs.24000/- including interest till today. Court fee on this amount will have to be paid. I have therefore to enquire as to whether the court fee expenses will be paid to me by the Collector or whether I should myself draw the amount from the Government Treasury. In either case necessary orders and directions may kindly be issued, to arrange for advance for court fee

Yours faithfully,

Dist.Govt.Pl.Kanara.

3110
24/12/52 E

Submitted for orders re. A

He may be asked to draw the amount by himself on abstract Bill

18/12

CONFIDENTIAL

No.DAII/483-A/9159

Office of the Financial Adviser & Additional Secy. to Government, Civil Supplies Department, New India Assurance Building, Bombay, December 1952.

2-1-53

To

The Collector of Kanara,
Karwar.

Sub:- Recovery of dues against Shree D.N.Gopi.

With reference to the above, I have to state that the Remembrancer of Legal Affairs has already sanctioned the institution of suit against Shree D.N.Gopi by the Memorandum No.LD/20889/E dated 12-12-1952 addressed to the District Government Pleader, Karwar. I enclose herewith a copy of Solicitor to Government's opinion as expressed by him in his UOR No.20716 E dated 10th December 1952. As will be seen from this opinion, the Solicitor to Government is of the view that there is no objection to proceed under section 187 to recover the amount as arrears of land revenue against the principal debtor and his surety's heir to the extent of the estate of the surety that may be in the hands of his heirs. The recovery will be limited to Rs. 30000/-. This department also sees no reason why the recovery to the extent of Rs. 30000/- should not be recovered as arrears of land revenue without prejudice to recover the balance by filing a suit independently. You are kindly requested to contact the District Government Pleader, Karwar, to take the action in the light of the opinion of the Solicitor to Government. Please advise this office regarding the further action taken by you.

426
5/1/53

(Sd.) S. S. Vilekar.
Deputy Director of Civil Supplies(Accts).

Copy for information to:

A/II/483-A/9159-A 1. The Solicitor to Government, Legal Department, Bombay, with reference to UOR No.20716/E dated 10-12-1952.

2. C.S.D.II.

Deputy Director of Civil Supplies(Accts).

Soh(ML)

AY/31/12/

No. 3364/E 1953

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 20th February 1953.

Subject:- Institution of a suit against Shri D.N. Gopi of Gokarna for sale of the mortgaged property.

MEMORANDUM.

With reference to his letter No. 585, dated the 19th December 1952 on the above subject, the District Government Pleader, Kanara, Karwar is informed that he should draw the amount by preparing an advance Bill.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Kanara, Karwar.

BM.
19.2.

Submitted for signature
19/2
Sol (M)
20/2

Express letter
Urgent Please

24 24

From

The District Government Pleader, Kanara.
Karwar.

To

The Remembrancer of Legal Affairs,

Secretariat Bombay.

No. 193, of 1953. Karwar: 17th March 1953.

LEGAL DEPARTMENT
19 MAR 1953

I am in receipt of your letter dated 11th instant sanctioning my advance bill for Rs.1668-12-0 for filing the suit against D.N.Gopi.

2. I have sent herewith draft of the plaint for your kind approval. Please verify ~~in~~ the heading and the contents of the plaint. Please let me know as to who should verify the plaint.

3. As it is proposed to file the suit before the Court closes for summer vacation, I request you to return the accompanying draft duly verified early.

Yours faithfully,

Dist.Government Pleader, Kanara

GOVERNMENT
LAW DEPARTMENT
File No. 2089
Date 20/3/53

Submitted
Draft plaint appears
to be in order
State of Bombay as
rightly cited as the
Plaintiff and the
heading as correct
Total claim as to be
shown by G.P.G.P after calcula
ting interest upto the date
of the suit.
The plaint as to be verified
by G.P.G.P under the Law Depart
Rule
D.G.P. Bombay may be requested
to send a copy of the plaint for record.
MC 24/3/53 Sol Cnl 24/3

23 37

No. 5721/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 25th March 1953.

Subject: Institution of a suit against Shri D.N.Gopi of Gokaran for sale of the mortgaged property.

MEMORANDUM:

With reference to his letter No.193 dated the 17th March 1953, the District Government Pleader, Karwar is informed that draft of the plaint forwarded by him for approval is in order.

As to the verification of the plaint, attention of the District Government Pleader is requested to Rule 111 of the Law Officers Rules under which the plaint has to be signed, verified and presented by the District Government Pleader.

Issued
AP
25/3

Draft of the plaint is returned with this. The District Government Pleader, is, however, requested to send a copy thereof for record of this office.

Submitted in signature C/C

For Remembrancer of Legal Affairs.

To

The District Government Pleader,
Kanara.

KYK
25.3

Sol C Mfg. R 25/3

25 24

From

The District Government Pleader, Kanara
Karwar

To

The Remembrancer of Legal Affairs,
Secretariat Bombay.

No. 218 of 1953. Karwar: 1st April 1953.

With reference to your letter No.5721-E dated 26-3-53 I have the honour to inform you that I have filed the suit against Shriyut D.N.Gopi to-day. I have enclosed herewith a copy of the plaint and a list of the documents produced to-day.

LEGAL DEPT.
4 APR 1953

Yours faithfully,

Dist.Govt.Pleader, Kanara.

8307
6.4.53
E

Submitted for information
The plaint may be perused by Mr. Sole
Mr. Sole may now be asked
ML 6/4/53 Sole Asstt. 6/4/53

27/34

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION,

AT KARWAR

Special Suit No. of 1953.

STATE OF BOMBAY Plaintiff.

versus.

Dattatraya Nagappayya Bhat Gopi, aged 50, land-holder residing at Gokern in Kumta taluka. .... Defendant

Claim Rs: 24625/- for all purposes.

The Defendant is the owner of a Rice Mill situate at Madangeri known as Amba Rice Mill. He was given contracts to mill Government Paddy from Ankola and Kumta talukas from the year 1945 to 1947. Paddy was being regularly issued to the defendant from December 1945 to November 1947. But the delivery of out-turn of rice was not regularly given by the defendant and accounts were not cleared at the end of each month by the defendant. Moreover, the out-turn was not given by the miller in quantities fixed by the Collector of Kanara. Thus the out-turn of rice due from the miller went on accu-mulating. As a very large amount to the tune of Rs.50000/- was thus due to Government from the defendant, Government contemplated to take legal steps for recovering the amount thus found due to Government from the defendant. Then the defendant executed a simple mortgage bond on 14-8-1948 as rectified by the deed of rectification dated 24th March 1949 in favour of the Governer of the Province of Bombay under-taking to pay the amount of Rs.20000/- by 18 instal-ments and in order to safe-guard the property specified in the said mortgage bond agreeing that the amount should be recovered by sale of the mortgaged property in addition to his personal liability in case of his failure to pay the dues. It was agreed that this payment should be made by 18 monthly instalments from the date of execution of the mortgage deed. In case of default to pay any three instalments the whole sum was made payable at once. The defendant also agreed to pay interest at 6% on this amount.

29 33

2. In addition to the aforesaid mortgage bond the defendant and his surety Damodhar Narasinha Hebbar of Achve in Ankola Taluka executed a separate security bond for Rs.30000/- on 14-8-1948 as ~~required~~ by the deed of rectifi--cation executed on 16-6-1949 in favour of the Governer of the Province of Bombay.

3. It was agreed in this mortgage bond that the final amount recoverable from the defendant should be deter--mined after an examination of the accounts by a competent official deputed by the Government. An account of total amount due from him on account of the out-turn of rice out--standing with him ~~xxxx~~ was taken and after deducting the amount due to him for milling charges and the amount of deposit Rs.6000/- which he had made, it was found that an amount of Rs.48788-3-0 including interest was due from the defendant on 31-12-1951. The mortgage deed in question was passed to cover a portion of this amount to the extent of Rs.20000/- only.

4. As the defendant failed to pay any amount towards the satisfaction of this claim, this suit has been filed for the recovery of the total amount due under the mortgage with ...erest at 5% from date of mortgage till date of suit, by sale of the mortgage property.

5. Out of the mortgaged property serial no.4 was one Goods-truck bearing No.B.Y.K.1161 single joint 1½ tons truck. However, later on, it transpired that this goods truck did not belong to the defendant and that its owner had taken its possession and carried it to Belgaum. Attempts were made to secure this truck but as the owner threatened to take legal action against the Government the truck could not be secured. It is no more in the possession of the defendant. The registration of the truck does not stand in the name of the defendant. Therefore it has not been included in the present suit.

6. The cause of action for filing this suit arose on 14-8-1948 and on 24-3-1949 at Madangeri within the jurisdi--ction of this Court.

31 35

7. This Court has got jurisdiction to try this suit as the mortgaged property lies within the jurisdiction of thi Court and the residence of the defendant is also within the jurisdiction of this Court.

8. It is therefore prayed that a decree may be passe for the following amount:-

(i) Principal amount.....	20,000- 0-0.
(ii) Interest from 14-8-1948 to date of suit at 5% on Rs.20,000/-.....	4,624- 0-0.
Total Rs.	24,625- 0-0.

with future interest till date of payment and also costs of this suit by sale of the mortgaged property mentioned below and he deficit by personal liability of the defendant.

DESCRIPTION OF THE MORTGAGE PROPERTY SITUATE AT MADANGERI IN KUMTA TALUKA.

1. Survey no.2A/1 5 acres 13 gunthas 11¾ annas with pot karab of 5 gunthas total area 5-18-11¾ assessed at Rs.11-8-0. Out of this area a portion of 30 gunthas bound -ed on the north by Madangeri-Kumta Road and by survey Boundary on the south and west and public Lane on the east held by the defendant on 60 years lease.
2. A building consisting of 4 rooms with mud walls and roof with asbetos plates in which the mill described at serial no.3 is situated.
3. Mill censisting of: (a) Crossely cold-start crude-oil engine No.E.crossely H.P.23.25.
   (b) Complete set of rice plant, one hullar No.4 with all accesseries.
   (c) Extra separator.
   (d) Cocoanut oil crusher with two borings with all assessories.
   (e) two grinding stones.
   (f) One iron bar 6' x 2½" with two borings.
   (g) One pipe 18' x 2"
   (h) One pipe 10' x 1½"

District Government Pleader.

33 37

I, B.S.Mavinkurve, District Gevernment Pleader, do hereby declare that the contents of this plaint are all true according to the information collected by me and believed to be true.

Signed at Karwar on: 1/4/53

BSM

District Gevernment Pleader.

1/4/53

true copy
Mavinkurve
DGP

35 39

IN THE COURT OF THE CIVIL Judge,JUNIOR DIVISION,

at: K A R W A R

Special Suit No. of 1953.

State of Bombay .....Plff.

vs.

Dattatraya Nagappayya Bhat Gopi .....Deft.

List of documents produced along with the plaint.

1. Letter No.20889-E dated 12th December 1952 from R.L.A. sanctioning the institution of this suit.
2. Record of rights Form No.VII,VIIA and XXII of survey No.2A/1 of Madangeri.
3. -Do- Form No.VI.
4. Simple mortgage bond for Rs'.20000/-passed by the defendant in favour of the plaintiff dated 14-8-1948.
5. Deed of Rectification passed by the Deft. in favour of Plff.dated 24-3-1949.

BSK

D.G.P.Kanara.

Legal Department.

The batch of papers is separated and question of filing a suit on the mortgage bond is separately taken up. Instructions are being issued for filing a suit on the mortgage bond.

2. The security bond executed by Shri D.N. Gopi and Shri D.N. Hebbar provides that Government will be entitled to recover the amount to the extent of Rs. 30,000/- under the provisions of the Land Revenue Code in case of failure of Shri Gopi to pay the amount. Shri D.N. Hebbar bound himself, his heirs and assignees to pay to Government when called upon by the Collector of Kanara total sum not exceeding thirty thousands rupees as surety to Shri D.N. Gopi. The amount can therefore be recovered from the principal debtor and/or his surety as arrears of Land Revenue due under section 187 of the Land Revenue Code. Shri D.N. Hebbar is reported to have died on 21st November 1949.

3. The Collector, in his report at page 5 has raised the question (Marked 'A') for Government to decide whether it will be regular to proceed under Land Revenue Code both against the Miller (the principal debtor) and surety's son or whether it is necessary to file a Civil Suit. Civil Supplies Department does not seem to have decided this question before forwarding the papers to this Department for according sanction to institute a suit.

4. There does not appear any objection to proceed under section 187 to recover the amount as arrears of land Revenue against the principal debtor and his surety's heir to the extent of the estate of the surety that may be in the hands of his heirs. This recovery will be limited to Rs. 30,000/-.

5. These papers are returned to the Civil Supplies Department for deciding whether action under Land Revenue Code should or should not be taken prior to instituting a suit when such action is legally allow-

able. If the Department decides to institute a suit instead of proceeding under the Land Revenue Code the papers may be returned to this department after obtaining from the Collector a translation of the statement dated 23rd September 1949 made by late Shri D.N. Hebbar.

S.R. Kapre

Solicitor to Government.

U.R. to C.S.D., No. 20/16 dated the 10/12 December 1952.

cks/9.12.

Please see RLAs no G 345 dt 12/6/53. (O.L.R. Bom/53) J. Bridie.

Submitted for my nature.
9/12/52. Sdr (with L)

Noted
PB
10/XII

Submitted after case file may be filed in

MK 22/12/53 S.S

Institution of a suit against Shri D.N. Gopi and his suretv Shri D.N. Hebbar.

slip E

1. The batch of papers is separated and question of filing a suit on the mortgage bond is separately taken up.

2. The security bond executed by Shri D.N. Gopi and Shri D.N. Hebbar provides that Government will be entitled to recover the amount to the extent of Rs. 30,000/- under the provisions of the Land Revenue Code in case of failure of Shri Gopi to pay the amount. Shri D.N. Hebbar bound himself, his heirs and assignee's to pay to Government when called upon by the Collector of ~~Kna~~ Kanara total sum not exceddings thirty thousands rupees as surety to Shri D.N. Gopi. The amount can therefore be recovered from the principal debtor and/or his surety as arrears of Land Revenue due under sec-187 of the L.R. Code. Shri D.N. Hebbar is reported to have died on 21-11-49.

3. The Collector, in his report at page 5 has raised the question (Makrked 'A') for Government to decide whether it will be regular to proceed under L.R. Code both against the Miller (The principal debtor) and surety's son or whether it is necessary to file a Civil Suit. C.S.D. does not seem to have decided this question before forwarding the papers to this Department for according sanction to institute a suit.

4. There does not appear any objection to proceed under section 187 ~~of~~ to recover the amount as arrears of land Revenue against the principal debtor and his surety's heir to the extent of the estate of the surety that may be in the hands of his heirs.

5. These papers may be returned to the C.S.D. for deciding ~~the question raised by the Collector Viz.~~, whether action under Land Revenue Code should or should not be

when such civil is legally advisable

taken prior to instituting a suit ~~in the matter~~. If the Dept
intends proceeding
~~it is~~ decided to institute a suit the papers may be sent. The L&L

returned to this department after obtaining from

the Collector a translation of the statement dated

23-9-49 made by late Shri D.N. Hebbar

AMC
8/12/52

or correct

HSP/8/12

Sol (Mfl)

8/12

A.N

41 1/5

Statement showing the civil suits pending in the court of the civil judge, S.Dn. Karwar, for the month of June 1953.

No. of suit and year of institution.	Date of institution.	Whether W.S.filed.	State at which stage pending.
Sp.O.S.No.2-1953.	1-4-1953.	No.	This suit was filed by the Bombay State against D.N.Bhat Gopi of Gokarn after obtaining the sanction from the Govt. It is fixed for filing deft's W.S.on 7-8-1953.

No. 491 of 1953.
Karwar, dated 11th July 1953.

Submitted to the Remembrancer of Legal Affairs, Bombay with reference to Government Circular, Legal Department No.6404, dated 8th June 1949.

Dist.Govt.Pl.Kanara,Karwar.

L.D.
16 JUL 1953
17301
G.17-7-53

Submitted for information
VK
13/7
Dy(M) 1817

43 S-J

From:

The District Government Pleader,Kanara,Karwar.

To

The Remembrancer of Legal Affairs, Bombay.

No. 462 of 1954. Karwar, dated 2nd August 1954.

Sir,

The suit filed by the Government against D.N.Bhat Gopa (Special suit No.2-1953) was heard in the third week of July and it has been fully decreed on the 30th July 1954. Certified copies of the judgment and decree have been applied for. They will be forwarded when received.

Yours faithfully,

Dist.Govt.Pl.Kanara,Karwar.

THE SECRETARY TO GOVT. OF MYSORE, LEGAL DEPARTMENT. 22646 11/8/54 L.D. 9 - AUG 1954

Leo acid. copy. 2 printed.

VL
11/6

Sol. (M.L) A.
1218

From:

The District Government Pleader,Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 552 of 1954. Karwar, dated 14th September 1954.

Sir,

Uncertified copy of judgment in Sp.O.S.No.2-1953 filed by the Government against D.N.Bhat Gopi has been sent herewith as required by Rule 130 of the Rules for the Conduct of Legal Affairs of the Government.

Yours faithfully,

Dist.Govt.Pl.Kanara.

47

Received on- 1st April 1953.

Registered on- 4th April 1953.

Decided on- 30th July 1954.

Duration- 1 year, 3 months and 29 days.

In the Court of the Civil Judge, Senior Division, Karwar.

At Karwar. Exhibit no.121.

Special Original Suit No.2 of 1953.

Pleaders.
Government pleader.

State of Bombay. Plaintiff.

against

Shri P.S.Kamat.

Dattatraya Nagappayya Bhat Gopi, 50, landholder residing at Gokarn in Kumta Taluka. Defendant

Claim- Rs.24625/-.

This is a suit by the State of Bombay for the recovery of Rs.24625/- alleged to be due in respect of a simple mortgage executed by the Defendant.

The subject-matter of the mortgage consists of a rice mill and its premises situate at Madangeri village in Kumta Taluka.

The Defendant is the owner of the above-mentioned rice mill which is known as "Amba Rice Mill". He started this mill some time in March 1945, presumably with a view to obtain contracts from Government for milling paddy. Those were the days when Rationing was in full swing and the Defendant-

*o.p.2.

miller, could not have obtained paddy from anywhere else for his milling work except from Government. The Government in its turn started giving him contracts for milling Government paddy from Ankola and Kumta Talukas from 1945 onwards but by the end of November 1947 it found out that the Defendant had not regularly given the outturn of rice in terms of the quantities fixed by the Collector. Thereafter the Government was awakened to the situation and began to adopt some rigorous measures for the purpose of effecting recoveries which finally resulted in the execution of the suit simple mortgage bond by the Defendant no.1 on 24th March 1949 and

an additional security bond for Rs.30,000/-.

The Government now makes out the following case in its plaint: The Defendant was given contracts for milling Government paddy from Ankola and Kumta Talukas from the year 1945 to 1947 and paddy was being regularly issued to him from December, 1945 to 1947. But the delivery of the outturn of rice was not regularly given by him in terms of the quantities fixed by the Collector of Kanara and further accounts were also not cleared by him at the end of each month. Thus the outturn of rice due from the miller- Defendant- went on accumulating and it accumulated to the tune of Rs.50,000/-. Government then contemplated to take legal steps for recovering the amount whereupon the Defendant executed a simple mortgage bond for Rs.20,000/ on 14th August 1948 as subsequently rectified by the deed of rectification dated 24th March, 1949 undertaking to pay the amount of Rs.20,000/- by 18 instalments. The properties secured thereunder were the properties mentioned above. Defendant further agreed to pay interest thereon at the rate of 5 per cent.

It was agreed in this mortgage bond that the final amount recoverable from the Defendant should be determined after an examination of the accounts by a competent official deputed by the Government. An account of the total amount due from him on account of the outturn of rice outstanding with him was taken and after deducting the amount due to him for milling charges together with the deposit amount of Rs.5000/- which he had made. it was found that an amount of Rs.48,788-3-0 including interest was due from Defendant on 31st December 1951. The mortgage deed in question was passed to cover a portion of this amount to the extent of Rs.20,000/- only

*As for the remaining amount an additional and separate security bond was taken from the Defendant and his surety for Rs. 30,000/- on the day of the execution of the mortgage itself. But this suit is only with respect of the dues of the mortgage bond which Defendant had failed to pay. *o.p.3.

These in brief are the allegations contained in the plaint. But the Defendant resists the claim by his written statement, at exhibit no.15 which is to the following effect:

2. The Defendant admits having milled Government paddy from

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1945 to 1947. But according to him there was no written or oral agreement fixing the outturn or rice for the paddy supplied and that he had delivered back all the outturn of rice that he could make out of the paddy supplied to him. In this connection he submits that when he started the mill in March, 1945, he had installed a Huller-type machine which from its very nature could not give a higher rate of percentage of outturn compared to the Shellar type or machine of other mills. The Government, he submits, was well aware in advance of this fact when it gave him the paddy and therefore he submits he was not liable to give it more than 51 per cent of outturn at the most. But the Government, it is said, insisted upon calculating the outturn at 54½ per cent and by adopting this mode of calculation it insisted upon Defendant to make good a huge deficiency. But the Defendant, it is said, did not agree to this. Whereupon the authorities, it is said, with-out listening to his protest gave him a notice to make good the deficiency in about February, 1948 and followed it up by an attachment of his mill and mill-premises in March of the same year. Further, some time in July 1948 the Collector of Kanara, it is said, called him to his Office at Karwar and told him that unless he would agree to certain terms and pass a mortgage and security bond, the mill would not be released from attachment. At this the De-fendant is said to have taken fright and finding no other alternative agreed to execute the mortgage deed and security bond as proposed. So he submits that the mortgage in question was taken * under undue influenc and coercion and therefore not valid in law.

*o.p.4.

His further submission is that there was also no legal consideration for the mortgage as the consideration stated in the deed was not an ascertained sum. He then goes on to impeach the accounting done by the Government auditors. His complaint in this behalf is that the accounting has been done on the basis of higher percentage of outturn and behind his back. So he submits that the dues if any at all were to be found against him would be considerably less than what have

been found by the Government Accountants and auditors.

After putting forward these contentions against the merits of the case made by the Government he claims certain deductions on the following accounts:

(i) Rs. 500-0-0 deposited by him on 11-4-1947 in Kumta Treasury while taking paddy for milling from Government.

(ii) " 200-0-0 Deposited in Ankola Sub-Treasury in two instalments of Rs.100/- each one in 1948 and the other in 1949 while giving tenders for both years.

(iii) " 4160-0-0 Due to Defendant as rent for two go-downs hired by Government from 15th May 1949 to 15th September 1953 at a settled rate of rent of Rs.80/- per month.

(iv) " 240-0-0 rent of one additional godown hired by Government from 1st July 1947 to 31st December 1947 at Rs.40/- per month.

(v) " 157-8-0 rent of one godown from 15th August 1949 to 31st December 1949 at Rs.40/- per month.

(vi) " 68-0-0 rent of one additional godown engaged by Government from 1st August 1949 to 30th November 1949 at Rs.40/- per month.

(vii) " 286-0-0 being milling charges of 654 bags of paddy at annas seven per bag given for milling in August 1949.

These deductions he claims either as part of the accounting done under the terms of the deed or as set off both legal and equitable. In addition to these, he makes out a case of damages against Government to the tune of Rs.50,000/-. In this connection he states that for the last four years the Government has high-handedly taken possession of the whole machinery machinery, the site and godowns belonging *to him and has thus put him to a great loss and that loss, according to him, comes to about Rs.50,000/-. Thus he submits that the Government having taken possession of the mortgage property, was bound to account to him and give him proper deductions as claimed by him in that behalf. So his submission is that if the accounts were taken properly and all these deductions were given to him there would on the contrary be something due to him from the Government instead of there being anything due from him to it. He therefore, prays for the dismissal of the suit with costs. But alternatively he makes a request for instalments for whatever found due against him.

3. The following issues were set down by my predecessor Shri Chaugule, for hearing, at exhibit no.27:-

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Issues.

1. Does Defendant prove that the suit mortgage deed was taken by undue-influence and coercion ?

2. Does he prove that the said mortgage deed and Rectification deed are illegal and not binding on him or his property ?

3. Does Defendant prove that the accounts taken by a competent officer of Government are not binding on him ?

4. If so, what was the quantity of paddy supplied to Defendant and what quantities were returned by Defendant to Plaintiff either in the form of rice and Kani ?

5. What was the agreement in respect of the supply of paddy and return of rice and Kani and gunny bags between Plaintiff and Defendant ?

6. Is Defendant entitled to deduct the amounts stated in the written statement para 9 as against the amount found due to Government ?

7. Is Defendant entitled to ask for an equitable or legal set off in respect of those sums mentioned in para 9 of his written statement without paying the necessary Court fees ?

8. Is Defendant entitled to ask for deductions of go-down rental amount in the amount found due to Government ?

9. Is Defendant entitled to ask for compensation in this suit for the alleged wrongful attachment of his properties by the Collector of Kanara ?

10. If so, does Defendant prove the total loss occasioned by such alleged attachment and alleged taking of possession by the Collector ?

11. Is the Defendant entitled to claim a deduction of that amount of that loss in the suit claim ?

12. What is due from the Defendant ?

13. What instalments ?

14. What decree ?

4. My findings:-

1. No.

2. No.

3. Plaintiff's pleader did not stress his case under this issue.

4. As per the statemen contained in exhibit nos.113, 114 and 11

5. As per the Collector's orders under exhibits nos.108, 118 and the agreements- exhibits nos.89, 77 and 78. The question of gunny bags does not come within the purview of this suit.

6. No.

7. No.

8. No.

9. No.

10. Does not survive; finding if necessa has failed to prov any loss.

11. Does not survive.- 12. Rs.24625/-.

13. Nil. 14. As per order.

R e a s o n s.

5. The best way of approach to the topics in dispute is through a thorough understanding of the nature, extent and scope of the mortgage in suit: for it not only forms the basis of the claim itself but through it are mirrored the many objections that are raised against the claim. That mortgage deed is at exhibit no.58 and though it reads like a simple mortgage deed it is by no means so simple as that. It is, as its contents reveals, a very uncommon type of mortgage deed, uncommon in the sense that it contains no definite sum as its stated consideration. Besides this, it also suffers from the defect of improper phraseology by which I mean that it has not been couched in proper and explicit words so as to convey in clear and unambiguous terms the nature, extent and scope of the liability that it wants to secure. In short, it is * not a happily worded document. But unless we extract from it *o.p.7. its exact terms we will not be in a position to assess the merits of the respective positions taken up by the parties in this suit. It is therefore necessary for us to give intelligible meaning to the terms of the mortgage before we proceed any further.

6. But in order to understand the exact nature, extent and scope of the terms of the mortgage, it is essential to view it in its proper context and for that purpose it is necessary for us to know the facts that eventually led to the culmination of the mortgage. The facts are as below:

7. Defendant, as we know, started his rice mill some time in March 1945 presumably with a view to obtain Government contracts for milling paddy and Government in its turn did give him contracts of milling paddy of Kumta and Ankola Talukas. In the begining the contractual terms regarding the outturn of rice and the rates of conversion were solely left to the discretion of the Collector who used to issue orders from time to time in that behalf. Exhibit no.108 dated 4th April 1944 and exhibit no.118 dated 30th January 1946 are two such orders issued by the Collector. Thereafter the contractual terms were governed by agreements entered into between the parties Exhibit no.89 dated

20th December 1946, exhibit no.77 dated 8th March 1947 and exhibit no.78 dated 11th April 1947 are the agreements. In this behalf it may be noted that with each order or agreement the outturn expected was gradually increased. But it seems the Defendant made continuous defaults in giving the expected outturns and this thing went on rather unnoticed till about the begining of 1948 when suddenly the Collector was awakened to the situation and he then found out that the Defendant had committed defaults to the tune of nearly Rs.50,000/- or so. The earliest documents to give any clue to these defaults are exhibits nos.84 dated 17th February 1948- a letter from the Mamlatdar, Ankola showing the dues of nearly Rs.22889-10-9 in respect of Ankola Taluka and exhibit no.79 dated 2nd February 1948, a bond passed by Defendant to the Mamlatdar Kumta, showing the tentative figure of his liability as Rs.21642-11-9 in respect of Kumta Tal
*o.p.8. Taluka. The Collector, now * rather proceeded vigorously against Defendant for the recovery of the dues. Then the Defendant, it seems, approached the Collector on 10th January 1948 and promised before him to furnish sureties to the extent of the dues owed by him. Thereupon the Collector wrote letter (exhibit no. 67) dated 20th January, 1948 to the Mamlatdar of Kumta telling him that the Defendant had approached him and promised to give surety before the Mamlatdar Kumta for the amount due from him and that if he had not given proper sureties his mill and other moveables worth to the extent of the amount due should be immediately attached and action should be taken to recover the dues as arrears of Land Revenue. The Defendant, it seems, still failed to furnish either the sureties or to pay-off the dues and consequently, it seems, the authorities attached his mill some time in March, 1948. Thereafter, as can be seen from exhibit no.66 dated 11th May 1948, the Defendant approached the Director of Civil Supplies in that connection and there, it seems, some terms were agreed between the Director and the Defendant. One of the important terms that was agreed then was that the Defendant should mortgage his milling machinery as well as his share in his joint family properties to Government on a validly executed

deed against the balance of amount due to Government from him, that the amount was to be decided after an audit of the accounts by a representative of the Director of Civil Supplies and that further the Defendant should also produce surety of substantial means for the balance. The Director communicated these terms to the Collector along with other terms under his above-mentioned letter, exhibit no.66, and further asked the Collector to get Defendant's acceptance of these terms. These terms were duly communicated to Defendant by the Mamlatdar of Ankola under his letter, exhibit no.68 dated 14th July 1948. Thereafter it seems Defendant entertained some misapprehensions regarding the surety-bond to be furnished by him and the total extent of the amount to be secured. He again, it seems, approached the Director and the Director wrote another letter, exhibit no.65 dated 16th July 1948 in that behalf to the Collector. In that letter he said that the intention of the Government was that the total security to be given by the miller should not exceed Rs.50.000/- and that security should be in the form of a mortgage on property for Rs.20,000/- and *Rs.30.000/- as personal security from a person of substantial means. He also further communicated in that letter that the Defendant wanted to execute two bonds, one mortgage bond for Rs.20,000/- of his Madangeri properties and another a personal bond jointly by him and another person of some financial position of Rs.30.000/- and that the arrangement was agreeable to the Government. Thereafter as a result of all these, Defendant passed the suit mortgage bond, exhibit no.58 dated 14th August 1948 for Rs.20.000/- and another security bond for Rs.30,000/- which is not before me and which does not at all form the subject-matter of the present suit. *o.p.9.

8. Now we take up the suit mortgage bond (exhibit no.58) To quote its relevant part, which is its main and controversial part, it is as below:

> There has been a large amount due to the Government from me on account of my failure to deliver the full outturn of the paddy into rice, as per agreement dated 11th April 1947. Wages are due to me for such milling work already completed by me. Even after deducting such sums due to me, a large amount will be due to Government from me. When the Government contemplated to proceed against me legally for recovery of such dues, it has agreed between me and the Government of Bombay that

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in addition to the deposit of Rs.5000/- already given by me, I should pass a mortgage bond for Rs.20000/- mortgaging my property mentioned below, in addition to my furnishing a surety bond. The final amount recoverable from me would be determined after an examination of the accounts by a competent officials deputed by the Government. I hereby undertake to pay such amount as the Government will determine subject the maximum of Rs.20,000/- within 18 months with interest at 5 per cent on outstanding balance in addition to the amount shown in the security bond. The consideration for this mortgage bond is, thus the balance due from me to Government as price of the paddy entrusted to me, for milling, the turn-over of which in rice I was bound to return to Government. The maximum extent of such liability has been covered by this mortgage deed to * safe-guard the payment of such sum and this mortgage deed has been passed by me, agreeing that the amount due to Government should be recovered by sale of this mortgage property in addition to my personal liability covered by the security bond in case of my failure to pay the dues."

*o.p.10.

Now Defendant's learned pleader tries to interpret these recitals in a very startling manner. His submission in the first instance is that the liability secured under the mortgage was the liability that arose under the agreement dated 11th April 1947 and it covered a period from the date of that agreement till the date of the execution of the mortgage. According to him, the wordings- "..... on account of my failure to deliver the full outturn of the paddy into rice, as per agreement dated 11th April 1947...." confined Defendant's liability only to the dues that accrued after the agreement and in view of it there was no scope in those words for extending his liability to any of the dues prior to the agreement. His next submission is that since the agreement referred to was taken by the Mamlatdar of Kumta, the liabilities in respect of the agreement were further confined to Defendant's dues in respect of the Kumta Taluka only and that Defendant's liabilities in respect of the Ankola Taluka were not at all secured by the mortgage. His third submission is that in view of the additional security bond of Rs.30,000/- taken by the Government that bond should have precedence over the mortgage. In other words what he means to say is that while assessing the liability of Defendant under the mortgage in the light of the

above submissions made by him, the amount of Rs.30,000/- secured under the security bond will have to be deducted first from the amount found due and for the remainder if any alone the mortgage would endure. If these submissions made by the learned pleader are accepted, they would lead to very startling results and those would be as below:

9. If the agreement of 11th April 1947 (exhibit no.78) were to be confined to the dues of Kumta Taluka alone and that too in respect or the transactions that occurred after that date and till the execution of the mortgage, it would, in the light of the statement of accounts put in by the Government at exhibits nos.114 and 115, show a balance of dues of about 6 bags in respect Ist class paddy and about 6 bags in respect of IInd class paddy, which will work out to Rs.400/- at the most in terms of its money value, and then if we were to first cover this ridiculous sum by the security bond of Rs.30,000/- there will remain nothing due at all to the Government under the mortgage bond. Vo.p.11.

10. But I think the deed does not warrant this sort of startling interpretation. What the learned pleader is trying to do in this case is that he is singling out some particular words- "on account of my failure to deliver the full out-turn of the paddy into rice, as per agreement dated 11th April, 1947" from out of their context and trying to give them a meaning so as to make it govern the entire tenor and terms of the deed. This obviously violates the rule of interpretation regarding the documents. It has been laid down in Khurshed Jahan Begam Vs. Qamqam Ali, I.L.R. 21 Lucknow, 539, and also in the Privy Council case Vatsavaya Vs. Poosapati, 26 B.L.R. 786, that a document should be interpreted as a whole and further the surrounding circumstances may be considered to interpret the words and to ascertain the intention of the parties. It is also informative to note here that in the case of Abdulla Ahmed Vs. Animendra Kissen, A.I.R. 1950, page 15 the Supreme Court also considered the subsequent conduct of both parties to the agreement while interpreting the true intention of the document. In view of these well-settled principles, it would not be right to adopt the method of interpretation that is tried to be adopted by the Defendant's learned pleader. Now the sentence itself on which the learned pleader relies,

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when read completely as a whole sentence, makes altogether a different sense. The sentence begins- "There has been a large amount due to the Government from me on account of my failure to deliver the full outturn of the paddy into rice, as per agreement dated 11th April 1947." So it can be seen from this sentence that the Defendant was conscious of the fact that he owed a large sum to the Government as opposed to the ridiculous-ly small sum now * tried to be made out by the learned pleader. Further his interpretation of- "as per agreement" seems to be "in respect of the agreement", which is quite a wrong meaning of the term. "As per agreement" in common parlance means "according to the agreement" and not "in respect of the agreement". If the ordinary meaning of "as per agreement" which is "according to the agreement" be substituted then it means that a large amount had accrued due to Government on account of Defendant's failure to return the outturn according to the terms contained in the agreement dated 11th April, 1947 which in other words means that the terms contained in the said agreement were to govern the calculation of the entire dues.

*o.p.12.

11. Now it is nowhere stated in the document that the dues that were to be calculated were the dues inrespect of the agreement. On the other hand the tenor of the entire deed makes out that the dues were in respect of all the previous arrears that were standing against Defendant and this meaning is particularly brought out by the sentence occurring in the middle of the document relating to the consideration, which runs thus: "The consideration for this mortgage bond is thus the balance due from me to Government as price of the paddy entrusted to me, for milling, the turnover of which in rice I was bound to return to Government." Now this sentence relates to the actual consideration of the mortgage and here the liability is nowhere confined to merely the liability arising in respect of the said agreement. On the other hand, it is stated here that the liability was in respect of balance due to Government as price of the paddy entrusted to Defendant

for milling, the turn-over of which in rice he was bound to return but he had failed to return. So we can see from this sentence that the liability covered was the liability in respect of all previous arrears till date of the mortgage, and I do not think there is any doubt about it. Otherwise there was no point in demanding a deposit of Rs.5000/- and mortgage deed for Rs.20,000/- with an additional security of Rs.30,000/-. Such huge demands against such ridiculous dues as tried to be shown by the learned pleader are out of all proportion and I fail to understand how Defendant could agree to these exorbitant demands if what he *now says be true. So the interpretation on the face of it is unacceptable. *o,p.13

12. But it may be asked why was the agreement of 11th April 1947 referred to in the heading of the deed ? In fact according to me, such a recital was not at all necessary. Perhaps it was made with a view to make calculations of the arrears in the light of the terms contained in the said agreement. Beyond this it means nothing. Now looking to the agreement itself, which is contained in exhibit no.78, there is nothing to show the liability of the Defendant in respect of his earlier dues was either written off or settled in any particular way. The agreement is purely an agreement relating to the outturn of rice that Defendant was to give in respect of the paddy supplied to him and it was arrived at between the Collector on one hand represented by the Mamlatdar of Kumta and the Defendant on the other hand. There is also nothing in it to show that the agreement was confined solely to the supply of rice in respect of Kumta Taluka. It is a sort of general agreement regarding all types of paddy supplied to the Defendant and it was signed by the Mamlatdar of Kumta as representing the Collector because he was the officer on the spot. So it could not be taken to mean that the agreement relates only to Kumta Taluka or that it was entered into with a view to give a clean passport to Defendant in respect of his previous dues. So the reference to this agreement in the mortgage bond, if at all. hits the Defendant adversely and it does not affect Government's case in any way. For, it demands higher per centages of return than those previously imposed by the Collector.

13. The mortgage bond may further be viewed in the light of

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its surrounding circumstances and these I have noted already. They go to show that there was a great agitation for the recovery of the previous dues from Defendant, that Defendant agreed to the terms proposed by the Director in that behalf and that as a result of his agreement with those terms he came to execute the mortgage deed. Now if we read the Director's letters under exhibits nos.66 and 65, we find that the very terms proposed by the Director * and agreed to by the Defendant in respect of the recovery of the previous arrears have been incorporated in the mortgage bond. So it is really surprising to see now Defendant turning round from that position and making out altogether a different case. In fact he never made out such a case before, not even in his written statement. It is for the first time that his pleader has tried to develop such a case at the time of his argument. Even if we look into Defendant's conduct subsequent to the mortgage there too we do not find anywhere of his having taken up such a stand at any time before. So I do not think there is any substance in the interpretation that is now tried to be put upon by the learned pleader.

*o.p.14.

14. The wordings of the deed clearly go to show that the liability that was secured thereunder was in respect of all the previous arrears due from Defendant to Government in respect of the short delivered outturn of rice. In other words the liability covered up all arrears due to Government from the time the Defendant began to mill paddy for Government, that is, since March 1945 till the date of the mortgage bond.

15. Having settled the extent of the liability, let us now turn to the other terms contained in the mortgage. It states that the final amount recoverable from Defendant was to be determined after an examination of the accounts by competent Officials deputed by Government and that Defendant was to pay such amount as the Government would determine subject to the maximum of Rs.20,000/- within 18 months with interest at 5 per cent on the outstanding balance. I do not think there are any ambiguities concerning these terms and Defendant's learned pleader also had no interpretation of his own in this behalf.

16. We next, come to a third point which is in controversy and that is, that the sum stipulated under the mortgage bond was to be recovered only after exhausting the remedy under the additional security bond of Rs.30000/-. Here again, I find nothing to support this sort of interpretation in the document. All that the document states in this behalf is that Defendant was to pass a mortgage bond for Rs.20,000/- in addition to his furnishing *security bond and further it has been rounded off by the following recitals viz. "The maximum extent of such liability" meaning the liability secured under the mortgage, "has been covered by this mortgage deed to safe-guard the payment of such sum and this mortgage deed has been passed by me, agreeing that the amount due to Government should be recovered by sale of this mortgage property in addition to my personal liability covered by the security bond in case of my failure to pay the dues." Now this clause only provides an additional remedy to the Government over and above what it obtained under the mortgage bond and it nowhere says anything about the manner or mode in which these remedies were to be exercised by the Government. Under this provision the Government was given liberty to pursue these remedies in anyway it liked and this certainly does not mean that Defendant was given the right of dictating the choice of the remedies against him. So I do not think there is any substance in the argument advanced in this behalf. *o.p.15.

17. Ultimately, as I find, the terms contemplated under the mortgage, are these: (i) that the consideration of the mortgage bond was the liability of Defendant in respect of the balance due from him to Government as price of paddy entrusted to him for milling, the turn-over of which in rice he was bound to return to Government but had failed to return; (ii) that the extent of this liability was to be worked out in sums and figures by competent officials deputed by the Government after an examination of the accounts; (iii) that the amount of liability secured under the mortgage was not to exceed Rs.20,000/- in any case; (iv) that the sum so arrived at, subject to the maximum of Rs.20,000/-, was to be paid by Defendant within 18 months with interest at 5 per cent thereon; (v) that the period of 18 months should run from the date of the execution of the mortgage d

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deed; (vi) that in case of default of payment of any three instalments the whole sum was recoverable at once; and (vii) tha this mortgage was in addition to the surety bond to be furnished by him. These are the important terms and * there are also minor terms but they do not matter for the consideration of this case.

*o.p.16.

18. The terms having been settled we next turn to the contention of Defendant that this mortgage was obtained from him by undue influence and fraud and therefore it was invalid in law. But this contention, in my opinion, has absolutely no substance in it. I have already noted above the events preceding the mortgage and the circumstances under which it came to be passed. The only event that Defendant can quote with any advantage, concerning this plea is the event about the attachment of his mill which was ordered to be made by the Collector in about March 1948. According to the Defendant this was the main factor which filled him with fright and sent him hurrying hither and thither and forced him to agree to whatever terms quoted by the Government. Now I cannot commend the Collector's action of having taken that most unwarranted step of attaching Defendant's mill. That attachment though it was made with a view to recover Government money, was none the less highhanded and unwarranted by law. That in substance was also the view of the Director when the attachment was brought to his notice. He therefore advised the Collector in his letter (exhibit no.66) dated 11th May 1948 thus- "from the papers submitted by you it is clear that it is impossible to collect the Government's dues as arrears of land revenue.". But with all that I am unable to p-pursuade myself that Defendant was coerced into any dis-advantageous agreement whereby the Government wrung out undue concessions from him. So long as Defendant fails to prove any such injury to his interests under the terms of the mortgage bond his grievance against the Collector's attachment though bad as i was, is all useless.

19. Now as already noted by me, though the Collector took such an unwarranted step the Government did not back it up whole-heartedly. On the other hand the Director in consultation

with Defendant decided upon offering Defendant the terms which subsequently came to be incorporated into the mortgage and those terms are to be found in his letter (exhibit no.66). Further in that letter he asked the Collector to sound Defendant whether he was willing to accept the terms. The terms * were duly conveyed to him by the Mamlatdar of Ankola under his letter, exhibit no.68 and the Defendant by his statement on oath agreed to accept them (vide exhibit no.97 his statement on oath). Now Defendant could verywell have refused to accept the terms if those terms were injurious to his interests. But let us presume that he was in a hurry to get his mill freed from the attachment, still we find Defendant in a sound mood. When it came to an interpretation of the terms he found that the Collector was interpreting them in a different way. He again approached the Director in that connection and the Director further clarified matters by his letter, exhibit no.65 dated 16th July 1948. These terms as clarified were subsequently adopted in the mortgage document. Here one may ask if the Defendant was in a hurry, how he would still disagree with the Collector regarding the interpretation of the terms and go to the Director again for further elucidation in the matter. This does not show that Defendant had so lost his head under the threat as to be not-mind-ful of the consequences of the undertaking that he was giving.

*c.f.p.17.

20. Let us now examine the terms themselves and see whether they affect the Defendant injuriously in any way. Under these terms Defendant did accept the liability of the previous dues. But there was nothing coercive about the acceptance of this liability, for Defendant at no time denied his liability in that behalf. Even at para 3 of his written statement (exhibit no.15) put in in this suit he admits his partial liability in respect of these arrears. So then there was nothing new in his acceptance of the liability under the mortgage bond. Further under the terms of the mortgage no definite sum as such was fixed against the Defendant. On the other hand, it was stated there that the exact amount of his liability was to be arrived at after taking accounts by competent officials to be deputed by Government in that behalf. This, in my opinion, was the greatest safeguard provided for protecting Defendant's interests. Then there was a

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further safe-guard the liability under the mortgage was limited to the maximum of Rs.20,000/-. Further on he was also given concessions * for paying off the amount by way of instalments. Now if the Government was bent upon coercing Defendant it could have very easily obtained from him a deed for a huge and stated amount instead of involving itself in all those difficulties of accounting etc. But it should be noted that the Government did not do anything of this sort. Here its behaviour, if any, was exemplary. It tried to evolve such terms as would effectively safe-guard the interest of both sides. So it does not now lie in the mouth of the Defendant to say that his interests were in any way adversely affected by the sort of document passed by him or that any undue concessions were wrung out from him.

*o.p.19

21. But if he still thought that any injury had in fact been done to him under the deed he had an excellent chance of escape out of the deed. That was, the deed as it was originally taken was in the name of the Collector as representing the Government of Bombay. Such a deed was obviously bad under Section 175(3) of the Government of India Act, 1935 which was then in force and which required all such deeds to be passed in the name of the Governor of the Province of Bombay and not in the name of the Collector as representing the Provincial Government of Bombay. The Government came to know of this mistake rather very late, i.e. about the March of 1949 and then it asked the Collector to get the original deed rectified by a deed of rectification in consonance with the requirement of the aforesaid Section of the Government of India Act, 1935. Thereupon the Collector called upon the Defendant to pass the necessary deed of rectification and the Defendant did pass the necessary rectification deed on 24th March 1949 (Vide exhibit no.80- the rectification deed). Now if the Defendant had felt himself injured in any way by the terms of the mortgage deed, he could have very safely refused to pass this subsequent rectification deed in which case the previous deed would have come to nothing. But then Defendant did voluntaril

execute this rectification deed which only goes to show that he had absolutely no quarrel with the previous deed. Further subsequent conduct of his also does not reveal that he at any time attacked the deed on any such grounds. All these go to show that the defence of coercion and undue influence which is now for the first time been conceived and raised, has absolutely *no truth in it. So I enter a negative finding against the Defendant on this issue. *o.p.19

22. We shall now take up the question of the consideration of the mortgage bond which, as we know from the terms of the bond, was left to be ascertained at a future date. According to the bond, the consideration of the mortgage was the balance due as price of the paddy entrusted to Defendant for milling the turn-over of which he was bound to return to Government but which he failed to return. The final amount in that behalf was to be determined after an examination of the accounts by competent officials deputed by the Government and the Defendant was to pay such amount as the Government determined subject to the maximum of Rs.20,000/-. In pursuance of this agreement the Government at the request of the Defendant deputed one Mr. Moorti, a special Accountant from Bombay who after examining of the accounts of Ankola and Kumta Talukas submitted his statements which are now exhibited (~~xxexhibits~~) at exhibits nos.113, 114 and 115. These statements make out a claim of Rs.51.898/- all told as it existed at the date of the mortgage in respect of the outturn short-delivered by Defendant regarding Ist Class and II Class paddy of both Kumta and Ankola Talukas. The stocks of paddy issued and the outturns delivered shown in the statement substantially agree with the registers maintained by Defendant regarding Ankola and Kumta Talukas. Exhibits nos.90 and 91 pertain to the stock registers of Ankola Taluka while exhibits nos.48 and 49 and 50 pertain to the stock registers of Kumta Taluka. There is only a slight disagreement about 105 bags of paddy regarding the paddy supplied from Kumta Taluka and Defendant's say in this behalf is that the paddy was not at all supplied to him. The out-turnsin respect of these supplies have been worked out on the basis of Collector's orders up to 30th January 1946 and thereafter on the basis of the agreements arrived at between Defendant and Government. The orders of the Collector are

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at exhibits nos.108, 118 and the agreements are at exhibits nos.89, 77 and 78. It must be remembered here that the mortgage does not say anything about the arrears of gunny bags and the statement also does not show anything about them. The Government pleader on his part *o.p.20. ncedes that he cannot agitate the claim regarding the gunny bags in this suit.

23. Now looking to the terms contained in the mortgage the Government it seems wanted at first to take a stand that Defendant shall have to accept this balance without any questioning as he had himself undertaken to pay whatever was found due against him by a competent official deputed by Government. But it should be said in fairness to the Government pleader that he does not now insist upon taking such a stand for the purpose of this suit and I am therefore not called upon to consider the point whether if the Government took such a stand it was warranted by the terms of the mortgage deed or not. The Government pleader on the other hand asked the Court to accept the balance found due by the Accountant after examining the accounts on merits and in the light of the contentions urged against them by Defendant.

24. The Defendant on his part, at one time quarrelled very seriously with the accounts taken by Mr. Moorti. He said that the calculations made by Mr. Moorti were all wrong as the basis of his calculations which was the stock of paddy issued to Defendant from time to time was made to rest upon highly inflated figures and that the outturns calculated by him were without any justification. He further complained that all this accounting was done behind his back and without his knowledge. He further put up a general defence at the time of his deposition before Court that he was not at all responsible for any shortage in the outturn. as according to him he had absolutely no control either over the paddy issued or milled by him. To put it more clearly his say was that Government used to bring the paddy to the mill area, store it in its own godowns and then dole it out for milling either through its godownkeepers or supervisors in whose presence he used to mill the paddy and who after the milling was

was done, used to take away all such outturn as was turned over by him. But later on, after the hearing was completed and at the ti time of the argument his pleader give up most of these contentions. The last defence especially of Defendant's non-responsibility could not at all endure in view of his statements made at paras 48 and 52 of his deposition that he used to have *control over the paddy doled out to him and further in view of his not having taken up such defence at any time, including in his written statement, prior to the deposition made by him in the suit and also in view of the evidence that was against him that he wsed to sign vouchers for consignments of paddy received by him. All along his defence was that he was not responsible to the extent of the claim made out by Government. So possibly such a stand which was so suddenly taken by him during the deposition could not be validly sustained. For all these reasons his pleader very wisely retreated from the new stand taken by the Defendant. He could also no longer quarrel effectively with the accounts made up by Mr. Moorti, except on some minor items- as the stock basis taken by Mr. Moorti substantially agreed with Defendant's own account books, exhibits nos.48, 49 and 50,, 90 and 91 as also the outturns worked out by Shri Moorti substantially agreed with the orders referred to and passed by the Collector and the agreements arrived at between the parties. Defendant's pleader on his part was unable to show any other basis for working the accounts. The dispute now at present is thus very much narrowed down and it is confined to the following minor items; viz:

*p.p.21.

i. That the stock position of paddy issued to Defendant from time to time as worked out by Mr. Moorti, contains an excess of 105 bags which according to Defendant was not supplied to him at all. The value of 105 bags of paddy according to him comes to Rs.1680/-.

ii. That the per-centage of outturn in respect of I Class paddy of Kumta Taluka in December 1945 and January 1946 was worked on the basis of 51½ per cent but it ought to have been calculated at 51 per cent according to the former notifications, exhibits nos.108 dated 4th April 1944 and exhibit no.118 dated 30th January 1946 issued by the Collector. That excess according to the statement put in by the Defendant's pleader works out at 8 bags of rice worth about Rs.248/-. This excess he submits should be deducted.

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iii. That further the outturn of paddy issued from 1946 to 20th December 1946 should have been worked out at 51½ per cent as ordered by the Collector under his notification exhibit No. 118; but that it has been worked out at 54½ percent according to the later agreement under exhibit no.89 dated 20th December 1946. Hence according to his submission there is an excess of 3 per cent which would * work out according to him to 10 bags worth about Rs.330/-.

*o.p.22.

iv. Similarly in respect of Ankola Taluka, the percentage of outturn should have been taken at 51½ per cent prior to 8th March 1947 which was the date on which the agreement regarding giving a higher per centage of 54½ per cent came into force. But as the statement stands it is worked at 54½ per cent even for that previous period. So the excess of 3 per cent according to him, stands to be deducted. It comes to about 135 bags of rice valued at Rs.4455/-.

(Vide Defendant's pleader's Jahiri Exhibit No.120)

So these in all are the only grievances that the Defendant's pleader has now to make against the accounting done by Mr. Moorti and the items complained of when totalled up come to Rs.6683/-.

25. Now I do not think there is any need to enter into the detailed merits of these grievances in view of the submission made by Government pleader on this point: He submits that even if the complaint made by Defendant's pleader be accepted and the balance found by Mr. Moorti be reduced by that sum still it would leave us with a balance of Rs.45215/- roughly and that according to him is more than sufficient to justify the mortgage consideration whereunder only Rs.20,000/- were claimed. I think there is great force in this submission. But the Defendant's pleader tries to submit that from this resulting balance, Rs.30,000/- the consideration of his additional surety-bond will have to be deducted as in his submission he has under that surety bond bound himself to the extent of Rs.30,000/- regarding the balance. But here I think the learned pleader is labouring under a mistake. As already noted by me the surety bond was given as additional security over and above what was contained in the mortgage bond, the ---

liability under which was expressly confined to merely Rs.20,000/- at the most. So the Government has a choice to enforce any of these bonds either singly or even alternatively. But now the Government has come forth with only the mortgage bond. So its duty for the present would be over, if it were to show that the balance of arrears found due against Defendant at the date of mortgage, exceeded the sum secured under the mortgage and this duty the Government has successfully perrormed by showing the balance to the tune of Rs.45000/- even after giving * a margin to the complaints made by Defendant against the Accountant. The actual sum due in excess of the mortgage amount will apparently be a matter for consideration when the Government tries to enforce the additional security-bond for Rs.30,000/- against the Defendant. So for the purposes of the present suit it is sufficient if the Government were to show that the consideration of the mortgage was justified by the balance found due against Defendant by the Government Accountant and this the Government, in my opinion, has successfully shown in this case. I therefore hold that the mortgage bond is effective to the extent of the maximum consideration of Rs.20,000/- stated in it.

*o.p.23.

26. In view of this finding it is difficult to understand Defendant's further plea that the mortgage was invalid on the ground that it was passed for an unascertained consideration. Now according to Section 58, a mortgage can be effected for the purpose of securing an existing or a future debt or for the performance of an engagement which may give rise to a peculiar liability. Here in this case there was already an ascertained liability and the debt too was in existence but only its extent was yet to be defined. So I fail to understand how such a consideration could not be legal under Section 58. The contention, in my opinion, has obviously no meaning.

27. By now we have disposed of all the contentions made by Defendant against the merits of Plaintiff's claim. It now remains for us to consider his counter-claims made on the grounds either as part of accounting or as set offs and damages. He claims accounting in the first instance in respect of the following sums; viz:-

1. Rs. 500-0-0 deposited by Defendant on 11th April 1947 while taking paddy for milling from Government, deposited in Kumta Sub-treasury.

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ii. Rs. 200-0-0 deposited in Ankola Sub-treasury in two instalments of Rs.100/- each, one in 1948 and the other in 1949 while giving tenders for both the years.

iii. Rs.4,160-0-0 due to Defendant as rent for two godowns hired by Government from 15th May 1949 to 15th September 1953 at a settled rate of rent of Rs.80/- per month.

iv. Rs. 240-0-0 rent of one additional godown hired by Government from 1st July 1947 to 31st December 1947 at Rs.40/- per month.

v. Rs. 157-8-0 rent of one godown from 15th August 1949 to 3rd December 1949 at Rs.40/- per month.

vi. Rs. 58-0-0 rent of one additional godown engaged by Government from 1st August 1949 to 30th November 1949 at Rs.40/- per month.

vii. Rs. 286-0-0 being milling charges of 654 bags of paddy at annas 7 per bag given for milling in August 1949.

Total- Rs.5632-8-0

All these items as can clearly be seen are not at all related to the mortgage transaction on hand. Only item no.7 seems to be closely connected with the milling of paddy, but that too as can be seen is for a period after the mortgage came into existence. The other items are only incidentally related to the milling of paddy. So being, they have got to be considered independently as separate claims made by Defendant against the Government and not as part of accounting pertaining to the accounts contemplated under the mortgage. But then the Defendant has failed to pay any Court-fees in respect of the same with the consequence that Plaintiff was not called upon to put in his say in respect of these claims. Therefore the Defendant is debarred from urging these claims. But his pleader submits in the alternative that the claims should at least be construed as falling within the ambit of equitable set off. Even then I do not think the pleader can urge them without paying Court-fees in that behalf. For authority please see, Wilrow Vs. Mahadeo Govind, 45 Bombay Law Reporter, page 516.

28. Now supposing he could urge these claims without

paying any Court-fees, even so, all told the claim in that behalf would come to Rs.5632-8-0 and the deductions of this amount from the total liability of Rs.45,000/- in no way brings it down below Rs.20,000/- so as to benefit Defendant in any manner. Therefore, too, the claim has not much meaning.

29. There now remains the plea as to damages. The basis of this plea is that the Government authorities since last 4 years have attached and taken possession of the whole machinary and the site and the go-down and have thus put Defendant to great loss for which the Government was liable to make good the Defendant at the rate of Rs.50/- per day.

*30. Plaintiff's reply to this claim is contained in his answer to question no.12 at exhibit no.20 to interrogatories delivered by Defendant. The Plaintiff states- "The Dept tried to dismantle the mortgaged mill machinery with a view to dispose it off. Hence with his consent it appears that the mill was locked both by the Mamlatdar of Kumta and the Defendant under two different locks each retaining his key. Thereafter when the mill was put up for sale on 28th September 1950 by the Mamlatdar of Kumta the Defendant was absent and therefore his lock had to be broken open under a Panchanama as the property to be sold had to be shown to the bidders. Since then the mill has got only one lock placed by the Mamlatdar of Kumta as a safeguard against dismantling of the mill or disposing of its parts. It was open to the Defendant to replace his lock. The auction sale was not pursued as the Government did not approve of the action taken by the Mamlatdar but ordered filing of this suit". *o.p.25.

31. Now even apart from this reply, I cannot see how Defendant can ask for an adjudication of this claim without paying the necessary Court-fees. This claim forms no part of the mortgage that took place in the year 1948. The grievance now made out pertains to the conduct subsequent of the Government authorities which is no part of the mortgage claim. The Defendant's pleader, however, submits that if the claim cannot be decided on the footing of damages still he is entitled to make the claim under Section 76 of the Transfer of Property Act according to which a mortgagee who had entered into possession of the mortgaged property was bound to render accounts of his occupation period. But the learned pleader it seems is making a mistake here.

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This is not a suit for accounts. I could have understood the relevancy of the claim if this was a suit for accounts. The suit is strictly in respect of the dues under a simple mortgage. So being, he cannot quote Section 76 with advantage in this suit. The action complained of by him is purely a matter outside the ambit of this suit. Therefore he should have paid Court-fees in this respect if he wanted the claim to be decided in this suit and without paying Court-fees he is not entitled to a hearing * in this behalf."

*o.p.26.

32. But even on merits I do not think the Defendant has a case. He himself admits at para 77 of his deposition that "when the Government took possession of the mill, two locks were put upon it one belonging to himself and the other to the Government which suggests that the locking was done by the Government with the tacit consent of Defendant. The suggestion gains further strength in view of Defendant's further admission that he did not make any written complaint in that behalf nor ~~give any notice to Government in that connection~~. So I do not think the Defendant can now successfully complain against it. Even granting that the Government did act high-handedly in the matter, still Defendant would not be entitled to any damages until he can show that he suffered any tangible loss thereby. Now it is his own admission at para 81 of his statement that if the Government work had been stopped he had no work to do in the mill till the De-control came into effect which came into effect only very recently. So then it is obvious from this that no tangible loss was caused to him by the stoppage of the mill. In that view of the case also he is not entitled to the damages claimed. However, I should observe here that it would unwise on the part of the Government to persist in its act of locking the mill property any longer.

33. In the end, so far as this suit is concerned, I think the Government succeeds. But there still remains Defendant's prayer for instalments. That prayer cannot be considered while passing a preliminary decree in a mortgage suit. I therefore disallow it and pass the following order.

O r d e r.

Defendant do pay Plaintiff Rs.24,625/- and costs of the suit with future interest at 4 per cent per annum from date of suit till payment within 6 months hence failing which Plaintiff is at liberty to take out decree final proceedings for the recovery of the money by the sale of the mortgage property and also by enforcement of the personal liability clause against Defendant.

Defendant to bear his own costs.

30th July, 1954.

Sd.M.M.Shirkol,
Civil Judge, Senior Division.

Sol.(M.L.)

In suit No.2 of 1953 in the Court of the Civil Judge, Senior Division, Karwar, Govt. obtained a preliminary decree dated 30-7-54 on a simple mortgage executed by the defendant in its favour. The judgment in the suit is at slip E. The preliminary decree directs the defendant to pay to Govt. Rs.24,625/- and the costs of the suit with future interest at 4 % per annum within 6 months of its date. In case of default in making payment the preliminary decree directs Govt. to apply for a final decree for sale. Under the terms of the decree Govt. is not entitled to apply for a final decree for sale till the 30th January 1955.

2. In the Financial Adviser's office note it is stated that the District Government Pleader has advised that office that a Receiver should be got appointed for the mill property which is included in the mortgaged property. The question is whether an application should be made for the appointment of a Receiver at this stage.

3. The ruling in Damodar vs. Radhabai, 40 B.L.R. p.1266 lays down that even in the case of a simple mortgage a Receiver can be appointed either before or after preliminary decree is made in the suit to enforce the mortgage. It was held in that case that it was just and equitable to appoint a Receiver because the interest due on the mortgage was in arrears and also because the mortgage property was in jeopardy owing to the mortgagor's failure to pay rates and taxes.

4. Order 40 Rule 1 of the Civil Procedure Code lays down the conditions under which a Receiver can be appointed. It says that when it appears to the Court to be just and ~~xx~~ convenient the Court may appoint a Receiver of any property. The words "just and convenient" do not mean that the Court can appoint ~~x~~ a Receiver simply because it thinks it convenient. A Receiver is appointed for the protection of rights or for the prevention of injury. The Court has to consider whether special interference with the possession of the deft. is required there being a wel-founded fear that the property in question will be dissipated or that other irreparable mischief may be done unless the Court gives such protection. If, in this case there is any apprehension that the mill property will be dissipated or other irreparable mischief may be done unless a Receiver is appointed, an application may be made for the appointment of a Receiver.

5. In the F.A.'s office note it is observed that " If the Receiver is appointed as suggested by the D.G.P. the cost will have to be borne by Govt. and net profit credited to nim". In this connection the following observation at p.1268 in the afore-cited case in 40 B.L.R. at p.1266 is relevant. ~~The observation is at p.1268.~~ It is as follows :-

> " The Court, when it appoints a receiver, merely takes charge of the property which is the subject-matter of the suit in order to protect it until it is decided who is entitled thereto. Amongst other things which the Court will have to decide in a mortgage suit is the title to any monies or other properties in the hands of a receiver, and the Court will direct the receiver to deal with the monies or properties accordingly. But the mere appointment of a receiver cannot, in my opinion, affect the ultimate rights of the parties in any property which the receiver may collect."

If the Court appoints a Redeiver it will give directions to him how to deal with the mill property and the profits derived therefrom. The Receiver will act according to the Court's directions.

Sol. Gl. consulted Ld. Deputy Advocate 27/10

Ld. Solicitor General to see & advise if any amendment is necessary

Sol. Gl. 22.10.54.

Ld. S.G. to see & give a definite opinion whether an amendment of S.C.O. is necessary

MAP/- 22/10.

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Legal Department.

I agree that an application may be made for the appointment of receiver as advised by the D.G.P. The remark that if a receiver is appointed the cost will have to be borne by Govt. does not seem to be correct. The costs will be costs in the cause.

Sd/- M.M.Nadkarni
Solr. (M.L.).
23.10.54.

U.R. to F.A's Office No. 24381/E dt. 25-10-54.

Submitted

23 Rilein Skanadakis (NCUS)

TR
3-0-11

Submitted 3/9/11.

Suits :

Kanara.

For sale of mortgaged property.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 19332/E.

Sachivalaya, Bombay, 31st August 1955.

Letter from the Collector of Kanara, forwarding papers and requesting sanction to the Institution of a suit against Shri Dattatraya Narayanappayya Gopi for sale of mortgaged property.

Memorandum to the District Government Pleader, Karwar, No. 20889/E, dated the 12th December 1952—Forwarding a copy of the Memorandum of Instructions in advance.

RESOLUTION.—Sanction is accorded to the Institution of a suit against Shri Dattatraya Narayanappayya Gopi for sale of mortgaged property.

By order and in the name of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

[P.T.O

To

* The Agriculture and Forests Department,
* The Collector of Kanara,
The District Government Pleader, Kanara, Karwar (with two copies of Memorandum of Instructions).

* With a copy of Memorandum of Instructions.

No. of 1955.

Copy forwarded for information and guidance to

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Memorandum of Instructions.

It is proposed to institute a suit against Shri Dattatraya Narayanappayya Gopi of Gokarna for sale of mortgaged property, for recovering an amount of Rs. 20,000 and interest thereon, secured by the mortgage deed executed by Shri D. N. Gopi on 14th August 1948 as rectified by a deed of rectification executed on 24th March 1949.

2. Shri D. N. Gopi of Madangeri, Taluka Kumta, is the owner of a rice mill situate at Madangeri known as Amba Rice Mill. He was given contracts to mill Government paddy from Ankola and Kumta talukas from the year 1945 to 1947. Paddy was being regularly issued to the Miller from December 1945 to November 1947; but delivery of out-turn of rice was not regularly given and accounts were not cleared at the end of each month by the Miller. Moreover, the out-turn was not given by the Miller in quantities fixed by the Collector. Thus the out-turn of rice due from the Miller went on accumulating. An account of total amount due from him on account of the out-turn of rice outstanding with him on 31st December 1951 was taken and deducting the amount due to him for milling charges and the amount of deposit he had paid on 8th June 1948, it was found that an amount of Rs. 4,87,88-3-0 including interest was due from the miller on 31st December 1951 (*vide* statement of accounts marked A).

3. As a very large amount to the tune of Rs. 50,000 was thus due to Government from the miller, it was under contemplation of Government to take legal steps for recovering the amount thus found due to Government from the miller. The miller Shri D. N. Gopi, however, executed a simple mortgage bond for Rs. 20,000 on 14th August 1948 as rectified by the deed of rectification dated the 24th March 1949 in favour of the Governor of the Province of Bombay undertaking to pay the amount of Rs. 20,000 by 18 instalments and in order to safeguard and secure the payment of the said amount he mortgaged the property specified in the said mortgage bond, agreeing that the amount due to Government should be recovered by the sale of the mortgaged property on his failure to pay the amount.

4. In addition to the aforesaid mortgage bond Shri D. N. Gopi the Miller and his surety Shri Damodar Narsinha Hebbar of Achve in Ankola Taluka executed a separate security bond for Rs. 30,000 on 14th August 1948 as rectified by the deed of rectification executed on 16th June 1949 in favour of the Governor of the Province of Bombay. Under this bond Shri Hebbar stood as surety to Shri D. N. Gopi for due discharge of the latter's liabilities to the extent of Rs. 30,000.

5. As the Miller Shri D. N. Gopi has failed to pay the amount as agreed under the mortgage bond it is necessary to file a suit against him on the mortgage bond. The question of filing a suit on the security bond is being separately dealt with. The suit should be instituted in the Court of the Civil Judge, Senior Division, Karwar.

6. The suit is to be instituted on the mortgage bond executed by Shri D. N. Gopi in favour of Governor of the Province of Bombay on 14th August 1948 as rectified on 24th March 1949. The details of the suit are given below :—

(1) The Governor of the Province of Bombay is the mortgagee of the property sought to be sold. The State of Bombay should be cited as the plaintiff.

(2) The following are the particulars of the mortgage :—

(*a*) *Date.*—The mortgage bond was executed on 14th August 1948 and a deed of rectification was executed on 24th March 1949.

(*b*) *Name of the Mortgagor.*—Shri Dattatraya Narayanappayya Bhat Gopi aged about 49, Mill owner, Brahmin by caste, resident of Madanageri in Taluka Kumta is the Mortgagor-debtor and he should be cited as defendant.

(*c*) *Sum secured.*—The amount secured by the mortgage bond is Rs. 20,000.

(*d*) *Rate of interest.*—Rate of interest is 5 per cent.

(*e*) *Property subject to mortgage.*—I. Survey No. 2-A, Hissa No. 1, 5 acres, 13 gunthas and 11¾ annas, Pot Kharab 5 gunthas, total area 5-18-11¾ assessed at Rs. 11-8-0 of this portion of 30 gunthas bounded on the north by Madangeri-Kumta Road, to the south survey boundary, to the east public land, to the west survey boundary. This plot is held by mortgagor on a lease of 50 years.

II. A building consisting of 4 rooms with mud walls and roof with asbestos plates in which the mill described in serial No. 3 is situated.

III. (A) Crossly Cold Start crude oil engine No. E Crossely, H. P. 23·25 fixed in the ground.

(B) Complete set of rice plant, one huller No. 4 with all accessories fixed in the ground.

(C) Extra separator.

(D) Cocoanut oil crusher with two borings with all accessories fixed in the ground.

(E) Two grinding stones.

(F) One iron bar 6′ × 2½″ with two borings.

(G) One pipe 18′ × 2″.

(H) One pipe 10′ × 1½″.

(*f*) *Amount now due.*—The amount due on 30th June 1952 is as shown below :—

	Rs.	a.	p.
(i) Principal amount ...	20,000	0	0
(ii) Interest from 14th August 1948 to 30th June 1952 at 5 per cent. on Rs. 20,000.	3,882	3	1
	23,882	3	1

The District Government Pleader is requested to consult the Collector and get the amount due up to date on account of interest and show the total amount due.

(*g*) Cause of action may be said to have arisen on 14th August 1948 and 24th March 1949 when the bond and rectification deeds were executed by the Defendant and on the dates (to be ascertained from Collector) when the Defendant failed to pay the instalments.

(*h*) (i) The Court may be requested to pass a decree for the total amount thus shown due in sub-paragraph (*f*) with interest from date of suit to that of payment and to ask the Defendant to pay the said amount with interest at 6 per cent. from date of suit to that of payment and in default to sell the property detailed in sub-paragraph (2) (*e*).

(ii) In case the proceeds of sale are found to be insufficient for the amount due under the decree the Court may be requested to allow the plaintiff to apply for a decree for the balance under Order 34, Rule 6.

(3) The District Government Pleader is also requested to apply under Order XL, Rule 1 of the Civil Procedure Code to the Court for an interim order appointing a receiver to take possession of the mortgaged property including the mill. This will enable the receiver to run the mill and the danger of any damage being caused to the machinery by the process of rusting will be avoided.